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MEMORANDA ON CUBA.

JULY 12, 1912.

Article III of the treaty of 1903 between the United States and Cuba (which incorporates the so-called Platt Amendment) reads as follows:

> "That the Government of Cuba consents that the United States may exercise the right to intervene for the preservation of Cuban independence, the maintenance of a government adequate for the protection of life, property, and individual liberty, and for discharging the obligations with respect to Cuba imposed by the treaty of Paris on the United States, now to be assumed and undertaken by the Government of Cuba."

It will be observed that the treaty provision may be analyzed as follows:

I. The treaty stipulates that "the Government of Cuba *consents* that the United States may *exercise* the *right* to intervene", etc.

II. The Government of Cuba consents to the exercise of this right of intervention—

1. "For the preservation of Cuban independence".
2. For "the maintenance of a government adequate—
   - (*a*) "For the protection of life, property, and individual liberty", and
   - (*b*) "For discharging the obligations with respect to Cuba imposed by the treaty of Paris on the United States, now to be assumed and undertaken by the Government of Cuba."

With reference to I, *supra*, it will be observed that the treaty provision is not a *grant* of a right but a *consent* to the *exercise* of a right. In other words, the treaty distinctly recognizes the right of the United States to intervene irrespective of the terms of the treaty itself, the treaty stipula-

tion being nothing more than an anticipatory consent of the Cuban Government to the exercise of that right. The treaty, therefore, need not be primarily invoked to establish the right of intervention, but only to meet any objection which the Government of Cuba might at any time be disposed to raise, in the absence of such a treaty stipulation, to the exercise of such admitted rights.

In this connection it is of interest to call attention to the statements made in the letter from Secretary of War Root to Governor Wood, of February 9, 1901 (while the Cuban Constitutional Convention was drafting the Constitution of Cuba), in which the Secretary of War set forth certain provisions which "the people of Cuba should desire to have incorporated in their fundamental law", with a statement that while these provisions might not be ultimately adopted by our own Congress they should be binding upon Governor Wood as the expressions of the Executive on the matters covered.

The third of the provisions submitted recited:

> "That upon the transfer of the control of Cuba to the Government established under the new constitution, Cuba *consents* that the United States *reserve and retain* the *right* of intervention for the", etc., etc. (See attached memorandum.)

In connection with this question, reference should also be made to President McKinley's message of December 5, 1899, in which, speaking of the relationship between the United States and Cuba, he said:

> "This nation has assumed before the world a grave responsibility for the future good government of Cuba. We have accepted a trust the fulfillment of which calls for the sternest integrity of purpose and the exercise of the highest wisdom." (For. Rels., 1899, p. xxix.)

Again, as was said by Secretary of War Root in the letter above referred to—

> "The United States has, and will always have, the most vital interest in the preservation of that island from the domination and control of any foreign power whatever. The pres-

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ervation of that independence by a country so small as Cuba, so incapable, as she must always be, to contend by force against the great powers of the world, must depend upon her strict performance of international obligations, upon her giving due protection to the lives and property of the citizens of all other countries within her borders, and upon her never contracting any public debt which in the hands of citizens of foreign powers shall constitute an obligation she is unable to meet. The United States has, therefore, not merely a moral obligation arising from her destruction of Spanish authority in Cuba and the obligations of the Treaty of Paris for the establishment of a stable and adequate government in Cuba, but it has a substantial interest in the maintenance of such a government.

"We are placed in a position where, for our own protection, we have, by reason of expelling Spain from Cuba, become the guarantors of Cuban independence and the guarantors of a stable and orderly government protecting life and property in that island."

It will be observed that these principles were announced before the enactment of the Platt Amendment, therefore before the adoption of the Platt Amendment in the Cuban Constitution, and therefore obviously before the adoption of the Platt Amendment in the form of a convention between the two Governments.

It is therefore submitted that, upon reason and upon principle, as well as upon the wording of the convention itself, the right of the United States to intervene in affairs in Cuba comes from sources other than the Platt Amendment, or the Constitution of Cuba, or from the provisions of the treaty of 1903; and that the Cuban Constitution and the conventional undertakings do no more, and in terms profess to do no more, than to give Cuba's consent to the exercise of such rights.

The fact that we have fundamental interests in Cuba which are not the subject of treaty or other grant and which exist independently thereof is specifically admitted in Article V of the treaty of 1903, which *recognizes* but does not *create* the interest of the United States and its people in the sanitation of Cuba, and in Article VII, which likewise *recognizes* but does not *create* the interest (that arises out of the imperative necessities of self-defense) which the United

States has in the maintenance on Cuban soil of coaling and naval stations.

Moreover, it may well be, and such is probably the fact, that neither the Platt Amendment, the constitution, nor the treaty is to be regarded as containing a schedule of all of the conditions and circumstances under which this Government has the *right* to intervene, and that it may well be that conditions will arise where it will be necessary for this Government to intervene in the affairs of Cuba under conditions not specified in any of the documents named.

Before passing to the second phase of this discussion, it seems desirable to consider the meaning of the word "intervene" as that term is used in international parlance.

Hall states that—

> "Intervention takes place when a state interferes in the relations of two other states without the consent of both or either of them, or when it interferes in the domestic affairs of another state irrespectively of the will of the latter for the purpose of either maintaining or altering the actual condition of things within it. * * * In the case moreover of intervention in the internal affairs of a state, it is generally directed only against a party within the state, or against a particular form of state life, and it is frequently carried out in the interest of the government or of persons belonging to the invaded state. It is therefore compatible with friendship towards the state as such, and it may be a pacific measure, which becomes war in the intention of its authors only when resistance is offered, not merely by persons within the state and professing to represent it, but by the state through the persons whom the invading power chooses to look upon as its authorized agents." (Hall, International Law, sixth edition, p. 278.)

The pertinent comments made by Westlake are in the following language:

> "The term intervention is used in international law to express two very different cases of political action. One is the interference of a state in affairs pending between two or more other states, the other is the interference of a state in the internal affairs of another state. * * *
>
> "Intervention in the internal affairs of another state is justifiable in two classes of cases. The first is when the object is

to put down a government which attacks the peace, external or internal, of foreign countries, or of which the conduct or avowed policy amounts to a standing threat of such an attack. The second is when a country has fallen into such a condition of anarchy or misrule as unavoidably to disturb the peace, external or internal of its neighbors, whatever the conduct or policy of its government may be in that respect.

* * * * * * *

"In considering anarchy and misrule as a ground for intervention the view must not be confined to the physical consequences which they may have beyond the limits of the territory in which they rage. Those are often serious enough, such as the frontier raids in which anarchy often boils over, or the piracy that may arise in seas in which an enfeebled government can no longer maintain the rule of law. The moral effect on the neighboring populations is to be taken into account. Where these include considerable numbers allied by religion, language or race to the populations suffering from misrule, to restrain the former from giving support to the latter in violation of the legal rights of the misruled state may be a task beyond the power of their government, or requiring it to resort to modes of constraint irksome to its subjects, and not necessary for their good order if they were not excited by the spectacle of miseries which they must feel acutely. It is idle to argue in such a case that the duty of the neighboring people is to look on quietly. Laws are made for men and not for creatures of the imagination, and they must not create or tolerate for them situations which are beyond the endurance, we will not say of average human nature, since laws may fairly expect to raise the standard by their operation, but of the best human nature that at the time and place they can hope to meet with. It would be outside our scope to pass judgment on present or recent cases, but it is by these principles that we must try such interventions as have taken place in Turkey, or as that of the United States in Cuba." (I Westlake International Law, pp. 304–306.)

Halleck seems to classify intervention into two sorts—armed intervention and pacific intervention, which latter he speaks of as "interference", and upon which he makes the following comment:

"The principal grounds upon which such interference has been justified are: first, self-defence; second, the obligations of treaty stipulations; third, humanity; and fourth, the invi-

tation of the contending parties in a civil war. We will here examine each of these grounds, with respect to pacific interference reserving for another place a discussion of how far they will justify a resort to force or a war of intervention."

Calvo, in his Dictionaire de Droit International, makes the following definition of the term "intervention":

"In international law, intervention signifies the interposition of one state in the affairs of other states.

"The different species of intervention are distinguished according to the forms under which they occur; (1) Unofficial intervention, which is exercised by oral or written representations or by so called *notes verbale:* one may consequently call it also diplomatic intervention; (2) Official intervention, which is exercised by notes delivered publicly; (3) Pacific or arbitral intervention; (4) Armed intervention, which manifests itself by a simple menace supported by the employment of military force." (See Pradier Fodere, vol. 1, sec. 363, for the same distinction as to pacific and armed intervention.)

These definitions, which may be almost indefinitely multiplied, make it perfectly clear that the term "intervention" includes not merely the use of armed forces or the military occupation of a country, but that it comprises also such pacific measures as may in any case be taken by a government in its interference with the internal domestic affairs of another government.

It therefore follows naturally that this Government may *intervene* in Cuba in other ways than by landing forces and undertaking a military occupation, and that by its constitution and the treaty the Government of Cuba has given an anticipatory consent to such intervention.

With reference to II, *supra*, it will be observed, as already pointed out, that the rights recognized are designated under two headings, as follows:

1. Intervention "for the preservation of Cuban independence."

No argument is necessary to establish that the intervention here contemplated, whether it be pacific or armed, is to be exercised for the purpose of *preserving* Cuban independence and not for the purpose of *restoring* it. This being

true, it is the right of the Government of the United States, to the exercise of which right Cuba has consented, to intervene in Cuban affairs by either warlike or pacific measures, whenever it considers that conditions arise threatening the independence of Cuba, in order that such independence may be preserved. It need not wait until the independence is lost before acting. That is to say, to make use of a homely illustration, the barn door is to be locked *before* and not *after* the horse is stolen.

In connection with this comment the terms of Article VII of the treaty should be considered, which provide as follows:

> "To enable the United States to maintain the independence of Cuba, and to protect the people thereof, as well as for its own defences, the Government of Cuba will sell or lease to the United States lands necessary for coaling or naval stations, at certain specified points, to be agreed upon with the President of the United States."

Reference is made to the comments already set forth upon the significance of this stipulation.

2. Intervention for "the maintenance of a government adequate"—

(*a*) "*For the protection of life, property, and individual liberty*".

Attention is called here to the fact that this stipulation, like the one preceding, contemplates preventive measures and not measures of restoration—that is to say, the treaty recognizes the right of this Government to intervene to maintain a government adequate for the purposes named, and not merely to intervene to reestablish a government of required effectiveness. In other words, Cuba has consented that this Government shall intervene not to reestablish an efficient government, but to preserve and maintain an efficient government. So that whenever, in the estimation of this Government, the maintenance of a government adequate for the protection of life, property, and liberty in Cuba is threatened,

the Government of Cuba has consented that the Government of the United States shall intervene for the purpose of maintaining such a government, and from the discussion already had it must be admitted that such intervention may be either pacific or by force of arms.

(*b*) "*For discharging the obligations with respect to Cuba imposed by the treaty of Paris on the United States, now to be assumed and undertaken by the Government of Cuba.*"

Secretary of War Root, in his letter dated February 9, 1901, and already referred to, to Military Governor Wood, said:

> "The treaty of peace concluded at Paris on the 10th of December, 1898, provides in the first article that 'as the island is, upon its evacuation by Spain, to be occupied by the United States, the United States will, so long as such occupation shall last, assume and discharge the obligations that may, under international law, result from the fact of its occupation for the protection of life and property.'
>
> "It contains numerous obligations on the part of the United States in respect of the treatment of the inhabitants of the territory relinquished by Spain, such as the provision of the tenth article, that the inhabitants shall be secured in the free exercise of their religion; of the eleventh article, that they shall be subject to the jurisdiction of the courts, pursuant to the ordinary laws governing the same; and of the ninth article, that they shall retain all their rights of property, including the right to dispose thereof, and the right to carry on their industry, commerce, and professions. The sixteenth article of the treaty provides that the obligations assumed in the treaty by the United States with respect to Cuba are limited to the time of its occupancy thereof, but that it shall, upon the termination of such occupancy, advise any government established in the island to assume the same obligations."

The treaty provision as above quoted, therefore, consents, on the part of Cuba, to the intervention by the United States whenever such intervention becomes necessary to secure the discharge of these obligations, and, under the discussion already set forth above, it is clear that such intervention may be either pacific or military.

It is fundamental to the principles of intervention and to the rights, duties, and obligations flowing therefrom, that the time, occasion, and manner of intervention must be determined by the intervening state or states. This follows naturally from the hypothesis, which is also the fact, that any and all interference by one state in the internal or external affairs of another is an exception to the fundamental doctrine of the equality and absolute independence, one from another, of states; and from the further fact that, *ex hypotheca*, interference is to remedy evils which threaten the interfering state, which state obviously can alone, and must alone, determine when such evils threaten and the methods it will adopt to obviate them.

If a disposition should appear to argue that while the above is a correct statement of the principles governing intervention in the absence of treaty, nevertheless where a treaty authorization or consent is involved it is necessary (a treaty being a bilateral contract) that the two Governments parties thereto should be in agreement as to the time, the occasion, and the manner of intervention, it may be replied that quite obviously a treaty of that kind (*i. e.*, where the two parties must agree upon such matters) might be made, and that, being made, it would be necessary that the two Governments should be in such agreement upon the time, the occasion, and the manner of intervention as the treaty might contemplate. But the treaty under discussion is not such a treaty, for the reason, in the first place, that, as already pointed out, it does not grant rights of intervention, but recognizes and consents to their exercise; that it uses the term "intervene" without qualification and therefore in its general, unrestricted, international law sense; and that it does not attempt to define either the time, the occasion, or the manner of intervention, but merely states the *purposes* to accomplish which Cuba has given an anticipatory consent for intervention. In other words, the treaty uses the term "intervene" without any restriction whatsoever and without any attempted definition save as to the *purposes* of intervention, thus leaving the term "intervene" in every other respect

to be interpreted in accordance with its international law meaning.

Now, regarding the import and effect of the treaty statement regarding the *purposes* of intervention, as already pointed out, since the *treaty does not create*, but *merely recognizes*, the right of this Government to intervene; and since the rights which this Government has are predicated, first, upon the fact, as pointed out by President McKinley in his message of December 15, 1899, that "this nation has assumed before the world a grave responsibility for the future good government of Cuba" (p. 2, *supra*); secondly, upon the fact that, as the Secretary of War said, "*for our own protection, we have*, by reason of expelling Spain from Cuba, *become the guarantors of Cuban independence and the guarantors of a stable and orderly government protecting life and property in that island*" (p. 3, *supra*); and, thirdly, upon the fact that we are under certain treaty obligations to Spain with reference to the Cuban Republic (see p. 8, *supra*)—it becomes obvious that, in view of these interests and obligations, which latter impose upon us responsibilities as toward third powers, this Government must, in order properly to protect its interests, as well as adequately to meet such responsibilities, determine for itself when such interests are impaired as well as when such responsibilities arise, as it must also determine for itself when its interests are threatened or its responsibility likely to be invoked. In no other way could the rights recognized, *but not created*, by the treaty be effectively enjoyed, because if it were necessary for the two Governments to come to an agreement either as to the impairment or as to the threatened impairment of our interests, and the same as to our responsibilities toward other nations, this Government might find that the rights recognized and the treaty stipulations themselves might and probably would become of no force and effect by reason of the disposition of Cuban officials to postpone the exercise of the rights until the evils which were intended to be avoided were fully upon this Government. The treaty should not be so interpreted as practically to nullify its provisions.

Or, to look at the matter from a slightly different angle, the treaty purports to do nothing more than to set forth the *purposes* for which intervention should take place, leaving all else untouched, and, therefore, while it might be argued that this Government could not intervene in Cuba for any other *purpose* than that mentioned in the treaty, save by an agreement with Cuba, yet that is the utmost that could be properly contended, for the reason that the treaty stipulation being solely as to the *purpose* of intervention, the only question that could arise under the treaty would be as to that purpose. Therefore, the only question in which Cuba could under any theory have a right to a voice or expression of opinion would be as to whether the particular *purpose* of intervention under discussion in any given case fell within the treaty provisions. But when this Government intervenes avowedly for one of the *purposes* named in the treaty, Cuba has absolutely nothing to say, under the treaty, unless it is prepared to contest the bona fides of our statement of purpose—that is, unless it is in a position to say that our intervention is not for any of the purposes named in the convention, but for some other purpose outside and beyond the convention.

It therefore naturally follows from these principles that the Government of the United States must determine in every case the time, the occasion, and the manner of intervention by it in Cuba, and that in this matter it is wholly uncontrolled save by its own interests and its national conscience.

Applying the principles above set forth to the existing state in Cuba, with reference to its financial policy and conditions, it would result that, if the Government of the United States is convinced that such policy and conditions are not such as will insure the "maintenance of a government adequate for the protection of life, property, and individual liberty" in Cuba, or that such policy and condition threaten the independence of Cuba, or that they make impossible the discharge by Cuba of the obligations imposed by the Treaty of Paris, then this Government has the right to intervene in

such form as it may see fit, either by pacific means or by military measures, in order that any of the purposes named may be accomplished.

Interference by one or more powers in the fiscal affairs of other powers, in and through pacific measures (though obviously and of course with the sanction behind such measures of a force necessary to make such intervention effective) is well recognized in international law. Bonfils, in his De Droit International Public, has the following discussion on this point:

> "The case of foreign creditors of a state claiming protection of their government to obtain payment of their credits, was frequently realized in the Nineteenth Century—the century of international loans (Greece, Turkey, Egypt, Servia, Portugal, &c.) In pure theory, a state is not authorized to constrain another state to the payment of this kind of debts. Lord Palmerston very justly said in a despatch of January 1848: To confide one's capital to foreign governments, to subscribe to a loan opened by a foreign state, is to make a financial speculation. The risk inherent in all operations of this kind is also found in subscriptions to a government loan. The lenders should foresee the eventuality of the insolvency of a state as of a simple individual.
>
> "In fact, European governments have intervened in favor of their national creditors with weak states incapable of resisting, but not with strong states who will not permit any intervention whatever between them and their creditors.
>
> "An example distinguishing intervention to protect the pecuniary interests of nationals, is offered in the European control established in Egypt in 1876—a control provoked by the detestable financial administration of the Khedive—a control confided to two functionaries, one English, the other French. A Khedival decree of January 27, 1878, established a commission of international investigation. The Ministry of Finance was given to an Englishman; that of Public Works, to a Frenchman. The Khedive sought to rid himself of foreigners by provoking a national movement. Upon protest of the powers, and notably of England and France, Ismail Pacha was deposed by the Sultan in June, 1879. The new khedive named a commission of liquidation composed of representatives of Germany, England, Austria, France, and Italy. This commission prepared the law of liquidation of March 31, 1880. After the English

occupation of 1882 a new loan was necessary; it was guaranteed by the powers, who took a decisive influence in financial matters. It was issued July 30, 1885. The European powers intervened again in 1890 and authorized the conversion of the privileged debt.

"The financial control of foreign powers was established in Tunis in 1869. By agreement with the Bey of Tunis, England, France, Italy, instituted a financial commission at the head of which was placed a French Inspector General of Finance. Since then France has established a protectorate and the law of February 9, 1889, has converted the Tunisian debt, in bonds redeemable in ninety-nine years and guaranteed by France.

"After the war of 1897 between Greece and Turkey, the great powers determined to establish a control over Hellenic finances, partly with the object of assuring the protection of their nationals, holders of Greek bonds.

"Intervention in favor of nationals, creditors of a foreign state, besides striking at the right of independence, are dangerous in their consequences. They excite the resentment of the people against foreigners, they complicate international relations."

The custom of nations thus recognizes, as one mode of intervention, interference with the fiscal affairs of another state, even though such interference has received the animadversion of certain international law writers. Being a recognized type of intervention, and irrespective of its propriety or impropriety as discussed by theoretical writers, interference in the fiscal affairs of Cuba falls within the intervention to which Cuba has given her consent in the treaty. The Government of the United States may therefore exercise such measures of interference or intervention in the fiscal affairs of Cuba by pacific or military means as in the judgment of this Government is necessary in order to accomplish the purposes indicated in the treaty, and this Government must be the judge of the character and extent of such measures.

Attached hereto is a memorandum collecting together the various statements and expressions of governmental officers from which may be gathered suggestions as to the meaning of the term "intervene".

THE PLATT AMENDMENT.

Interpretation of Article III in Connection with the Matter of this Government's Right of Protest or Control in Cases of Financial Maladministration in Cuba.

Article III of the Treaty of Relations of 1903 between this Government and Cuba, which embodied Article III of the Platt Amendment, reads:

> "The Government of Cuba consents that the United States may exercise the right to intervene for the preservation of Cuban independence, the maintenance of a government adequate for the protection of life, property, and individual liberty, and for discharging the obligations with respect to Cuba imposed by the Treaty of Paris on the United States, now to be assumed and undertaken by the Government of Cuba."

The question arises whether "intervention" in this article means only actual occupation of Cuban territory by American forces or whether it has also the broader meaning of "intervention" as employed in international law, which comprehends the giving of advice or the making of demands or requests by diplomatic representation.

The object of this memorandum is to summarize the results of an investigation of possible sources of interpretation of this article found in the events connected with the adoption of the amendment by the Congress of the United States and by the Cuban Constitutional Convention and in the opening events of the Second Intervention.

DEBATES IN CONGRESS.

The Platt Amendment, an amendment to the Army Appropriation Bill of 1901, was submitted to the Senate on February 25, 1901, adopted by that body on February 27, and

concurred in by the House of Representatives on March 1. It reads as follows:

"*Provided further*, That in fulfillment of the declaration contained in the joint resolution approved April 20, 1898, entitled 'For the recognition of the independence of the people of Cuba, demanding that the Government of Spain relinquish its authority and government in the island of Cuba, and to withdraw its land and naval forces from Cuba and Cuban waters, and directing the President of the United States to use the land and naval forces of the United States to carry these resotions into effect,' the President is hereby authorized to 'leave the government and control of the island of Cuba to its people' so soon as a government shall have been established in said island under a constitution which, either as a part thereof or in an ordinance appended thereto, shall define the future relations of the United States with Cuba, substantially as follows:

"I.

"That the government of Cuba shall never enter into any treaty or other compact with any foreign power or powers which will impair or tend to impair the independence of Cuba, nor in any manner authorize or permit any foreign power or powers to obtain by colonization or for military or naval purposes or otherwise, lodgment in or control over any portion of said island.

"II.

"The said government shall not assume or contract any public debt, to pay the interest upon which, and to make reasonable sinking fund provision for the ultimate discharge of which, the ordinary revenues of the island, after defraying the current expenses of government, shall be inadequate.

"III.

"That the government of Cuba consents that the United States may exercise the right to intervene for the preservation of Cuban independence, the maintenance of a government adequate for the protection of life, property, and individual liberty, and for discharging the obligations with respect to Cuba imposed by the treaty of Paris on the United States, now to be assumed and undertaken by the government of Cuba.

"IV.

"That all acts of the United States in Cuba during its military occupancy thereof are ratified and validated, and all lawful rights acquired thereunder shall be maintained and protected.

"V.

"That the government of Cuba will execute, and as far as necessary extend, the plans already devised or other plans to be mutually agreed upon, for the sanitation of the cities of the island, to the end that a recurrence of epidemic and infectious diseases may be prevented, thereby assuring protection to the people and commerce of Cuba, as well as to the commerce of the Southern ports of the United States and the people residing therein.

"VI.

"That the Isle of Pines shall be omitted from the proposed constitutional boundaries of Cuba, the title thereto being left to future adjustment by treaty.

"VII.

"That to enable the United States to maintain the independence of Cuba, and to protect the people thereof, as well as for its own defense, the government of Cuba will sell or lease to the United States lands necessary for coaling or naval stations at certain specified points, to be agreed upon with the President of the United States.

"VIII.

"That by way of further assurance the government of Cuba will embody the foregoing provisions in a permanent treaty with the United States."

As appears from its text, the Platt Amendment provided, as a condition precedent to the withdrawal of the American forces of occupation, that Cuba should adopt as a part of its constitution, then in the making, the provisions set forth in the amendment in regard to the future relations between this Government and Cuba. These provisions, as above indicated, were, subsequent to their adoption as a part of the Cuban Constitution, embodied in a treaty of relations between this Government and Cuba in the year 1903.

The amendment was introduced, as indicated above, at the close of the session of Congress, and the debate on its provisions, both in the Senate and in the House, was necessarily limited. The report of the final discussion in the Senate is contained at pages 3145 to 3149 of volume 34, part 4, of the Congressional Record. The final discussion in the House appears at pages 3338–3384 of the same volume. The principal objection to the amendment on the part of the Democratic minority seems to have been that it provided for a form of protectorate or suzerainty over Cuba and consequently was a violation of the promise of the United States contained in the final part of the resolution of April 20, 1898, adopted as a preliminary to the war with Spain. The part of the resolution in question reads:

> "The United States hereby disclaims any disposition or intention to exercise sovereignty, jurisdiction, or control over said island [Cuba], except for the pacification thereof, and asserts its determination, when that is accomplished, to leave the government and control of the island to its people."

The principal arguments in favor of the amendment made by the Republican majority seem to have been that its provisions were necessary, first, in order to make the Monroe Doctrine effective with respect to Cuba, and secondly, to insure the performance of this Government's moral obligations under the Treaty of Paris.

Nowhere in the debates does there appear to be a discussion of the meaning of "intervention" in the aspect now under consideration, namely, its possible meaning of interference in Cuban affairs through diplomatic representation. In the record, however, there is a considerable amount of discussion indicating that in the references in the debate to intervention the legislators had in mind actual occupation of Cuban territory. The force of this, however, would seem to be minimized by the fact that the question now under consideration seems never to have been definitely raised.

ADOPTION OF THE AMENDMENT BY THE CUBAN CONSTITUTIONAL CONVENTION.

The following data has been taken principally from a book entitled "Cuba and the Intervention" (Longmans, Green & Co., New York, 1905), by Albert G. Robinson, a newspaper correspondent, who appears to have been in Cuba for considerable periods of time during the events described in his book.

As a result of several orders issued by the executive authorities of the American Provisional Government a convention, called for the purpose of adopting a Cuban Constitution, met in Habana in the early part of 1900. The convention was to adopt a constitution for Cuba and to provide what should be the future relations between Cuba and the United States.

Subsequent to the framing of the constitution proper Secretary of War Root addressed to General Wood, Military Governor of Cuba, the following letter:

"WAR DEPARTMENT,
"*Washington, February 9, 1901.*

"SIR: As the time approaches for the Cuban constitutional convention to consider and act upon Cuba's relations with the United States, it seems desirable that you should be informed of the views of the Executive Department of our Government upon that subject in a more official form than that in which they have been communicated to you hitherto. The limitations upon the power of the Executive by the resolution of Congress of April 20, 1898, are such that the final determination upon the whole subject may ultimately rest in Congress, and it is impracticable now to forecast what the action of Congress will be. In the meantime, until Congress shall have acted, the military branch of the Government is bound to refrain from any committal, or apparent committal, of the United States to any policy which should properly be determined upon by Congress, and, at the same time, so far as it is called upon to act or to make suggestions bearing upon the course of events, it must determine its own conduct by reference to the action already taken by Congress, the established policy of the United States, the objects of our present occupation, and the manifest interests of the two countries.

"The joint resolution of Congress of April 20, 1898, which authorized the President to expel the Spanish forces from Cuba, declared—

"'that the United States hereby disclaims any disposition or intention to exercise sovereignty, jurisdiction, or control over said island except for the pacification thereof, and asserts its determination, when that is accomplished, to leave the government and the control of the island to its people.'

"The treaty of peace concluded at Paris on the 10th of December, 1898, and ratified by the Senate on the 6th of February, 1899, provides in the first article that—

"'as the island is, upon its evacuation by Spain, to be occupied by the United States, the United States will, so long as such occupation shall last, assume and discharge the obligations that may, under international law, result from the fact of its occupation, for the protection of life and property.'

"It contains numerous obligations on the part of the United States in respect of the treatment of the inhabitants of the territory relinquished by Spain, such as the provision of the tenth article, that the inhabitants shall be secured in the free exercise of their religion; of the eleventh article, that they shall be subject to the jurisdiction of the courts, pursuant to the ordinary laws governing the same, and of the ninth article, that they shall retain all their rights of property, including the right to sell or dispose thereof, and the right to carry on their industry, commerce, and professions. The sixteenth article of the treaty provides that the obligations assumed in the treaty by the United States with respect to Cuba are limited to the time of its occupancy thereof, but that it shall, upon the termination of such occupancy, advise any government established in the island to assume the same obligations.

"Our occupation of Cuba has been under the binding force both of the resolution and of the treaty, and the pacification mentioned in the resolution has necessarily been construed as coextensive with the occupation provided for by the treaty, during which we were to discharge international obligations, protect the rights of the former subjects of Spain, and cause or permit the establishment of a government to which we could, in good faith, commit the protection of the lives and property and personal rights of those inhabitants from whom we had compelled their former sovereign to withdraw her protection. *It is plain that the government to which we were thus to transfer our temporary obligations should be a government based upon the peaceful suffrages of the people of Cuba, representing the entire people and hold-*

ing their power from the people, and subject to the limitations and safeguards which the experience of constitutional government has shown to be necessary to the preservation of individual rights. This is plain as a duty to the people of Cuba under the resolution of April 20, 1898, and it is plain as an obligation of good faith under the treaty of Paris. Such a government we have been persistently and with all practicable speed building up in Cuba, and we hope to see it established and assume control under the provisions which shall be adopted by the present convention. It seems to me that no one familiar with the traditional and established policy of this country in respect to Cuba can find cause for doubt as to our remaining duty. It would be hard to find any single statement of public policy which has been so often officially declared by so great an array of distinguished Americans authorized to speak for the Government of the United States, as the proposition stated, in varying but always uncompromising and unmistakable terms, that the United States would not under any circumstances permit any foreign power other than Spain to acquire possession of the island of Cuba.

"Jefferson and Monroe and John Quincy Adams and Jackson and Van Buren and Grant and Clay and Webster and Buchanan and Everett have all agreed in regarding this as essential to the interests and the protection of the United States. *The United States has, and will always have, the most vital interest in the preservation of the independence which she has secured for Cuba, and in preserving the people of that island from the domination and control of any foreign power whatever. The preservation of that independence by a country so small as Cuba, so incapable, as she must always be, to contend by force against the great powers of the world, must depend upon her strict performance of international obligations, upon her giving due protection to the lives and property of the citizens of all other countries within her borders, and upon her never contracting any public debt which in the hands of the citizens of foreign powers shall constitute an obligation she is unable to meet. The United States has, therefore, not merely a moral obligation arising from her destruction of Spanish authority in Cuba and the obligations of the treaty of Paris for the establishment of a stable and adequate government in Cuba, but it has a substantial interest in the maintenance of such a government.*

"*We are placed in a position where, for our own protection, we have, by reason of expelling Spain from Cuba, become the guarantors of Cuban independence and the guarantors of a stable and orderly government protecting life and property in that island.* Fortunately the condition which we deem essential for our own interests is the condition for which Cuba has been struggling, and which the

duty we have assumed toward Cuba on Cuban grounds and for Cuban interests requires. It would be a most lame and impotent conclusion if, after all the expenditure of blood and treasure by the people of the United States for the freedom of Cuba and by the people of Cuba for the same object, we should, through the constitution of the new government, by inadvertence or otherwise, be placed in a worse condition in regard to our own vital interests than we were while Spain was in possession, and the people of Cuba should be deprived of that protection and aid from the United States which is necessary to the maintenance of their independence. It was, undoubtedly, in consideration of these special relations between the United States and Cuba that the president said in his message to Congress of the 11th of April, 1898:

"'The only hope of relief and repose from a condition which can no longer be endured is the enforced pacification of Cuba. In the name of humanity, in the name of civilization, in behalf of endangered American interests which give us the right and the duty to speak and to act, the war in Cuba must stop.

"'In view of these facts and of these considerations I ask the Congress to authorize and empower the President to take measures to secure a full and final termination of hostilities between the Government of Spain and the people of Cuba, and to secure in the island the establishment of a stable government, capable of maintaining order and observing its international obligations, insuring peace and tranquillity and the security of its citizens as well as our own, and to use the military and naval forces of the United States as may be necessary for these purposes.'

"And in his message of December 5, 1899:

"'This nation has assumed before the world a grave responsibility for the future good government of Cuba. We have accepted a trust, the fulfillment of which calls for the sternest integrity of purpose and the exercise of the highest wisdom. The new Cuba yet to arise from the ashes of the past must needs be bound to us by ties of singular intimacy and strength if its enduring welfare is to be assured. Whether those ties shall be organic or conventional, the destinies of Cuba are in some rightful form and manner irrevocably linked with our own, but how and how far is for the future to determine in the ripeness of events. Whatever be the outcome, we must see to it that free Cuba be a reality, not a name, a perfect entity, not a hasty experiment bearing within itself the elements of failure. Our mission, to accomplish which we took up the wager of battle, is not to be fulfilled by turning adrift any loosely framed commonwealth to face the vicissitudes which too often attend weaker states whose natural wealth and

abundant resources are offset by the incongruities of their political organization and the recurring occasions for internal rivalries to sap their strength and dissipate their energies.'

"And it was with a view to the proper settlement and disposition of these necessary relations that the order for the election of delegates to the present constitutional convention provided that they should frame and adopt a constitution for the people of Cuba, and as a part thereof provide for and agree with the Government of the United States upon the relations to exist between that Government and the government of Cuba.

"The people of Cuba should desire to have incorporated in her fundamental law provisions in substance as follows:

"1. That no government organized under the constitution shall be deemed to have authority to enter into any treaty or engagement with any foreign power which may tend to impair or interfere with the independence of Cuba, or to confer upon such foreign power any special right or privilege without the consent of the United States.

"2. That no government organized under the constitution shall have authority to assume or contract any public debt in excess of the capacity of the ordinary revenues of the island after defraying the current expenses of government to pay the interest.

"3. That upon the transfer of the control of Cuba to the government established under the new constitution Cuba consents that the United States reserve and retain the right of intervention for the preservation of Cuban independence and the maintenance of a stable government, adequately protecting life, property, and individual liberty, and discharging the obligations with respect to Cuba imposed by the treaty of Paris on the United States and now assumed and undertaken by the government of Cuba.

"4. That all the acts of the military government, and all rights acquired thereunder, shall be valid and shall be maintained and protected.

"5. That to facilitate the United States in the performance of such duties as may devolve upon her under the foregoing provisions and for her own defense, the United States may acquire and hold the title to land for naval stations, and maintain the same at certain specified points.

"These provisions may not, it is true, prove to be in accord with the conclusions which Congress may ultimately reach when that body comes to consider the subject, but as, until Congress

has acted, the Executive must necessarily within its own sphere of action be controlled by its own judgment, you should now be guided by the views above expressed.

"It is not our purpose at this time to discuss the cost of our intervention and occupation, or advancement of money for disarmament, or our assumption under the treaty of Paris of the claims of our citizens against Spain for losses which they had incurred in Cuba. These can well be the subject of later consideration.

"Very respectfully,

"ELIHU ROOT,
"*Secretary of War.*

"Maj. Gen. LEONARD WOOD,
"*Military Governor of Cuba,*
"*Habana, Cuba.*"

It will be noticed that shortly after the receipt of this letter the Platt Amendment, which had been foreshadowed by it, was passed by the American Congress. There appears to have been considerable opposition to the amendment in Cuba and uncertainty as to the precise effect of Article III.

Under date of April 3, 1901, the following official statement of the meaning of Article III was made by the Secretary of War:

"WOOD, *Habana.*

"You are authorized to state officially that in the view of the President the intervention described in the third clause of the Platt amendment is not synonymous with intermeddling or interference with the affairs of the Cuban government, but the formal action of the Government of the United States, based upon just and substantial grounds, for the preservation of Cuban independence, and the maintenance of a government adequate for the protection of life, property, and individual liberty, and adequate for discharging the obligations with respect to Cuba imposed by the treaty of Paris on the United States.

"ELIHU ROOT, *Secretary of War.*"

On pages 263 to 276 of Robinson appears an account of the final steps in the adoption of the amendment by the Cuban convention. This, in summary, is as follows: Suggestion was made in the convention that a commission be sent to Washington to confer with the administration concerning the interpretation of the amendment and its finality.

A commission was appointed, came to Washington, and on April 25, 1901, after a call on the President, engaged in a conference with Secretary Root. This conference was secret and the details have never been made public. The commission took away with them on their return to Cuba an analysis of the measure as interpreted by Secretary Root, but were given to understand that the ultimatum of the Platt Amendment was a decision in which there could be no change and from which there could be no withdrawal. On the 28th of May the amendment was adopted by the convention by a vote of 15 to 14. The majority report upon which the vote was taken, after quoting Article I of the Treaty of Paris, the joint resolution of April 20, 1898, and the terms of the Platt Amendment, proceeded with the following explanations:

> "*Inasmuch as Secretary Root, being authorized by President McKinley, says that 'the Platt law has for its object the guaranteeing of the independence of Cuba, and does not mean interference with its government, or the exercise of a protectorate or of sovereignty, and also that intervention will only take place when independence is endangered by outside powers or grave interior disturbances creating anarchy*, and inasmuch as Secretary Root has said that the naval stations will not be used for vantage points of intervention, but only to protect Cuba against foreign powers, we report as follows:
>
> "That, in virtue of the fact that the Platt law in its preamble says it is a fulfillment of the Joint Resolution, and has been adopted by Congress with the principal object of establishing independence, we do propose to the Convention to accept the following as an appendix to the Constitution."

The Robinson narration continues as follows:

> "The first, second, fourth, and fifth clauses of the Platt Amendment are quoted in their entirety. *The third clause has the following addition:*
>
> "'*It being understood that the United States have the right to intervene to prevent the action of a foreign power or disturbances causing a state of anarchy, and that the intervention shall always be the act of the United States, and not of isolated agents. The intervention shall suppose neither sovereignty nor a protectorate, and shall last only sufficiently long to establish normal conditions. Said intervention, it is also understood, shall not have the right to interfere in the Government, but only the right to preserve independence.*'

"An addition to the sixth clause says that the ownership of the Isle of Pines shall be settled by a future treaty.

"An addition to the seventh clause says:

"'It shall be understood that the naval stations do not give the United States the right to intervene in the interior government, but are established with the sole purpose of protecting American waters from foreign invasion directed against Cuba or the United States. Cuba will sell or lease the necessary land at points to be agreed upon later.'

"An addition to the eighth clause says that the Government of Cuba suggests at the same time a treaty of commerce based upon reciprocity.

"*The accepted report was also made to include a letter addresed to Secretary Root by Senator Platt, a copy of which had been given to Mendez Capote while the Commission was in Washington. The letter was as follows:*

"'*I am in receipt of your letter of this date (April 26), in which you say that the members of the Commission of the Cuban Constitutional Convention fear that the provisions relative to intervention, made in the third clause of the Amendment which has come to bear my name, may have the effect of preventing the independence of Cuba, and in reality establish a protectorate or suzerainty by the United States; and you request that I express my views on the questions raised. In reply I beg to state that the Amendment was carefully prepared with the object of avoiding any possible idea that by the acceptance thereof the Constitutional Convention will thereby establish a protectorate or suzerainty, or in any manner whatsoever compromise the independence or sovereignty of Cuba; and speaking for myself it seems impossible that such an interpretation can be given to the clause.* I believe that the Amendment should be considered as a whole; and it ought to be clear on reading it that its well-defined purpose is to secure and safeguard Cuban independence and set forth at once a clear idea of the friendly disposition of the United States toward the Cuban people, and the express intention on their part to aid them if necessary in the maintenance of said independence. These are my ideas; and although, as you say, I cannot speak for the entire Congress, my belief is that such a purpose was well understood by that body.'

"This act of the Convention encountered the disapproval of the authorities in Washington. After several conferences between the President, Secretary Root, and Senator O. H. Platt and Senator Spooner, it was decided at a Cabinet meeting to notify the Convention that its action could not be regarded as a satisfactory compliance with the American requirements. *Instructions were therefore telegraphed to General Wood to inform the Convention that it could not proceed with the work of establishing a government, and that the troops would not be withdrawn until the Platt Amendment had been accepted without qualifications.*"

On June 12, 1901, the convention voted to accept the amendment without qualification.

The foregoing official statements quoted by Mr. Robinson are set forth as a record of the known declarations of this Government concerning the reasons, force, and scope of the amendment. It will be observed, however, that these statements concerning the interpretation of Article III are so general in their nature as to furnish little certain warrant for a precise definition of "intervention" at the present time. It may be said, however, that, negatively at least, they are no obstacle to adopting the broader meaning of "intervention" now under discussion.

The report of the Secretary of War for 1901 contains practically no information which would shed light upon the present question in addition to that given in the Robinson narrative. It contains the letter of February 9, 1901, sent to Military Governor Wood and the despatch to Governor Wood of April 3, 1901, which have already been quoted. No comment is made on these instructions.

A request was made by the writer of this memorandum to the Insular Bureau of the War Department for any record which the Bureau might have either in regard to the conference between the commission of the Cuban convention and the Secretary of War of April 25, 1901, or in general concerning the War Department's interpretation of the terms of Article III. The Insular Bureau reported that a search of its records and of the records of the office of the Secretary of War showed nothing in addition to the data hitherto set forth obtained from other sources.

REPORT ON "CUBAN PACIFICATION", BY SECRETARY OF WAR TAFT AND ASSISTANT SECRETARY OF STATE BACON OF DECEMBER 11, 1906.

The report described in the foregoing caption is one of the action taken by the officers mentioned, under the direction of the President, in assisting to bring about peace in Cuba during the period from the 14th of September to the

13th of October, 1906, at which latter date the officers left Cuba, the Provisional Government of Cuba having in the meantime been established under the Platt Amendment.

As apposite to the present question, reference may be made to the following correspondence set forth on pages 445 to 446 of the report, which would seem to indicate that in the minds of the writers there might be under Article III various kinds of "intervention".

"DEPARTMENT OF STATE,
"*Washington, September 10, 1906.*

"STEINHART, *Habana:*

"Your cable received. Two ships have been sent, due to arrive Wednesday. The President directs me to state that perhaps you do not yourself appreciate the reluctance with which this country would intervene. President Palma should be informed that in the public opinion here it would have a most damaging effect for intervention to be undertaken until the Cuban Government has exhausted every effort in a serious attempt to put down the insurrection and has made this fact evident to the world. At present the impression certainly would be that there was no real popular support of the Cuban Government or else that the Government was hopelessly weak. *As conditions are at this moment we are not prepared to say what shape the intervention should take. It is, of course, a very serious thing to undertake forcible intervention, and before going into it we should have to be absolutely certain of the equities of the case and of the needs of the situation.* Meanwhile we assume that every effort is being made by the Government to come to a working agreement which will secure peace with the insurrectos, provided they are unable to hold their own with them in the field. Until such efforts have been made we are not prepared to consider the question of intervention at all.

"BACON, *Acting Secretary.*"

"DEPARTMENT OF STATE,
"*September 11, 1906.*

"STEINHART,
"*American Consul-General, Habana:*

"*Your letter of September 5th has had the careful consideration of the President, who, for your private information, believes actual, immediate intervention to be out of the question.* We are considering, however, and would like your opinion, as to whether or not to

send a word of emphatic warning as to the certainty that intervention will come in the end unless the people of Cuba, for the sake of their country, find some way to settle their difficulties, irrespective of personalities, cease their contentions, and live in peace. This you may convey confidentially to President Palma, but not for publication. You will urge President Palma to use in the most effective manner all the resources at his command to quell the revolt.

"BACON."

"HABANA, *September 10, 1906.*

"SECRETARY OF STATE,

"*Washington:*

"*Your cable received and directly communicated to the President, who* asks ships remain for a considerable time to give security to foreigners in the island of Cuba, and *says that he will do as much as possible with his forces to put down insurrection, but if unable to conquer or compromise Cuban Congress will indicate kind of intervention desirable.* I appreciate reluctance on our part to intervene, especially in view of Secretary Root's recent statements. Few, however, understand Cuban situation and a less number are able to appreciate the same. This is, of course, without any reference to superior authority. Palma applied public funds in public works and public education, but not in purchase war material. Insurrectionists for a considerable time prepared for present condition, hence Government's apparent weakness at the commencement. Yesterday's defeat of rebels gives the Government hope. Attempts useless from the start.

"STEINHART, *Consul-General.*"

Reference in this same connection may also be made to the following extracts from an opinion of the Judge Advocate General, dated September 15, 1906, concerning the force and operation of Article III of the treaty, which appears at page 494 of the report:

"It is assumed, for purposes of discussion, that an insurrectionary movement has come into being in the island of Cuba with which the Cuban Government is powerless to deal; it is also assumed that the existence of such conditions has become known to the President either as the result of his own observations or of authoritative representations which have been made to him, or upon the admission of the Government of Cuba that it has exhausted its powers and is unable, by its

own agencies and instrumentalities, to maintain order in the island.

"Upon the happening and fulfillment of the conditions above described the duty of intervention with a view to the establishment and maintenance of public order will have accrued. *In the execution of the intervention the first steps are or may be political and advisory. The Government and people of the island may be officially notified of the power and duty of the Executive under the treaty, and negotiations may be undertaken with a view to the restoration of order by pacific methods, or by a resort to good offices, or by a compromise, or a redress of grievances. If these methods fail, however, the next step in execution will consist in the issue of a proclamation by the President calling upon all persons composing insurrectionary combinations to disperse and retire peaceably to their respective abodes within a specified number of days from the date of such proclamation.*"

As showing the same general trend of thought, reference may also be made to a letter addressed to the Peace Commissioners by Alfredo Zeyas, representing the Cuban Liberal party, concerning a peace proposal which had recently been made. The pertinent part of the letter, for the present purposes, reads as follows:

"*They* [the Moderate party] *know that President Roosevelt and the American people wished to avoid armed intervention in Cuba*, and they proposed to force that intervention, their plans even going to the extreme of provoking it by insurrectionary acts of their guerillas and militia, by attacks on American detachments, and by burning foreign property. We formally call your attention to these plans, and you will remember that several days ago I advised you of the possibility that deeds of this kind might be committed in Cienfuegos.

"*Armed intervention would be for us, sincere friends of the Americans but ardent friends of liberty and national dignity, a sad event*, though we may respect and accept it as a means, painful to you also, to attain the end we both desire. For this reason we earnestly beg you to try to avoid it, and that *inasmach as the Platt Amendment establishes neither the form nor extent of intervention by your Government*, it be limited so long as other occurrences do not determine more direct and efficacious action, to order the institution of a provisional president designated in the proclamation and empowered to act in accordance with the law in all matters relating to administration; but such proclamation should likewise contain the necessary provisions that

shall enable a gradual termination of the transitory period, and such proclamation shall approach existing law in so far as may be compatible, although ignoring the precepts of such laws wherever necessary."

RECENT RESOLUTIONS IN CONGRESS.

An examination has been made of the discussion reported in the Congressional Record concerning a resolution and a bill introduced by Senators Nelson and Bacon, respectively, on June 8 and 10 in regard to the pending Cuban disturbances. This discussion, however, was found to be not helpful with respect to the question under consideration.

Finally, reference may be made to the fact that recent newspaper reports evidence a growing custom to speak of "fiscal intervention" as distinguished from "military intervention". For example, an article in the New York American, dated Habana, June 25, reads in part as follows:

> "It is stated here that Washington is in possession of facts concerning conditions here which demand *both fiscal and military intervention.*"

CASES OF MALADMINISTRATION OF CUBAN FINANCE.

Improvident Concession Contracts.

The following is a rough list of the principal cases of maladministration of Cuban finance which have occurred or been proposed during the Gomez administration. The list does not purport to be a complete one of the class of cases chosen, and, moreover, takes no account of the various minor cases of the same nature which have from time to time been reported by the American legation at Habana. The descriptions of the projects are, of course, only of a very general nature. The list includes pending projects, projects which have been defeated, and projects which have gone through.

I. PORTS IMPROVEMENT PROJECT.

This is a law which was rushed through the Cuban Congress providing for the dredging and improving of Cuban ports, whereby in return for work which has been estimated would cost not over $12,500,000 the concessionary company is given, for a period of 30 years, the right to collect all tonnage dues paid in Cuban ports at new advanced rates provided for in the bill. The present estimates of the annual revenue from this tax show it amounts to over $1,000,000, which figure will, of course, constantly increase with the development of Cuban trade, and will greatly increase after the opening of the Panama Canal. Upon the basis of the present revenue the company will, at the very latest, be reimbursed for its work during half the life of the concession and consequently will take all the revenues of the latter half

of the concession as clear profit. There are other considerable sources of profit in the contract. The Department is now endeavoring to have the contract amended and put upon an equitable basis.

2. CAIBARIEN–NUEVITAS RAILWAY CONCESSION.

During the past year or so a number of railway projects have been mooted under which the Cuban Government was to give substantial assistance to companies or persons who should undertake railway construction in Cuba. Against the Department's protest a bill was recently passed by the Cuban Congress authorizing the construction of the Caibarien-Nuevitas Railway under a subvention of about $10,000 per mile. It is said that this subvention will more than suffice for the construction of the road. Consequently Cuba is to pay for the road which will be owned and operated by the concessionaire. It has been said, however, that the subvention is not payable until about 1917.

3. COMPULSORY IRRIGATION PROJECT.

In April, 1911, a bill was introduced in the Cuban Congress providing for a scheme of compulsory irrigation. The work of installing an irrigation system, to cost about $25,000,000, was to be let to a concessionary company. To this company a concession was to be given for sixty years, during the life of which it should have the right to collect various taxes graded according to the kinds of crops raised by the cultivators. As indicated by the title of the bill irrigation was to be compulsory. The Department instructed the legation to register a protest against the bill as loosely drawn, ill advised, and improvident. This bill appears to have been shelved. Thereafter, a commission was appointed to study the irrigation problem. Following upon this the Department has had presented for its consideration a new irrigation project which purports to solve the problem by furnishing a cheap fuel to be used by irrigators in power engines employed to pump water for irrigation from wells.

4. PETROLEUM MONOPOLY PROJECT.

The bill indicated in the concluding portion of the preceding section is one recently introduced in the Cuban Congress giving the concessionary company the right to import crude petroleum *and its derivatives* free of all import duties, which duties at present are reported to amount to over 200 per cent ad valorem. This privilege of free import is granted as an exclusive concession to the concessionary company and gives it a practical monopoly of the oil trade in Cuba. In return for this privilege the company is to install a storage and distributing system for fuel oil (which system is said to be necessary in order to make the use of oil fuel practicable in Cuba), and agrees to sell to irrigators all oil used as fuel at cost.

The various drafts of the bill which have so far been examined by the Department leave the impression that the company will derive a handsome revenue from its concession. In the drafts of the bill first submitted to the Department the obligations of the concessionaire were so vaguely defined as to leave it open to the concessionaire to furnish little or no consideration for its privileges. The last draft submitted is far from satisfactory in this respect. It is estimated that on the basis of the present importations under the excessively high duty, the company's annual profit would amount to at least $400,000.

5. SANITATION AND PUBLIC IMPROVEMENT EXPENDITURES FROM THE $16,000,000 SPEYER LOAN.

For some time past the Department has received complaints from various contractors employed to do the work under the sanitation and public improvement contracts projected in connection with the $16,000,000 Speyer loan to the effect that they were unable to secure the payment of current accounts and were apprehensive as to future payments because of their information that the proceeds of the loan, instead of being applied to the payment for work done under the contracts, were being frittered away to pay the

salaries of a huge force of political personnel in the Cuban Department of Public Works. The legation reported, for example, with respect to the work of extending and improving the water supply of Habana, that of the $2,000,000 appropriated for this item of improvement about $700,000 had been expended, of which latter sum half has gone to pay personnel; or, in other words, that the personnel charge has been 50 per cent rather than the 10 per cent originally estimated. It is said that the monthly charge of the Department of Public Works is about $40,000, and that if this charge continues it will not be long before the loan proceeds will be exhausted without the payment for the work originally contemplated. It has been reported that the Cuban Government is desirous of floating a new loan of $11,000,000 to provide for the obligations of these contracts.

6. HEYDRICH CONCESSION FOR THE VENTO WATER WORKS.

In June, 1911, the Department had occasion to consider a bill introduced in the Cuban Congress granting to Alfredo Heydrich a concession for the construction and operation of the Vento Water Works, a part of the proposed Habana water-works system. The bill appeared to be ill-advised and improvident. It was alleged that the annual profit to the concessionaire, the total expenditure called for being $2,000,000, would amount to $835,000. The legation protested and the bill did not go through.

7. PAULA WHARVES CONCESSION.

In December, 1910, the Cuban Government entered into an arrangement with the United Railways Co. of Habana whereby it transferred the "Arsenal" water-front property owned by the Government in exchange for the "Villanueva" property owned by the company. Since, under the assessed valuations of the two properties, the "Arsenal" property was valued at $1,500,000 more than the "Villanueva" property, it was stipulated that the company should pay for certain public improvements for the city of Habana, among which were

three steel and concrete piers and warehouses on the site of the old Paula wharves. Recently it was reported that President Gomez had issued a decree granting a concession for the operation of these wharves to one Leopoldo Autran, a customhouse broker, who was said to be a "dummy" for other interests. The one consideration moving from the concessionaire was his agreement to defray the charges of maintenance of the wharves during the life of the concession, which was 30 years. Protest by the legation, coupled with the pressure of local public opinion, resulted in the cancellation of the decree.

8. RODRIGUEZ BANK-NOTE CONTRACT.

Last summer the Department received a complaint from the American Bank-Note Company, which then had the contract for printing Cuban revenue stamps, that it had been approached by a person said to be near the President of Cuba with a proposition to pay to this individual for his principals a substantial sum in consideration of the renewal of the company's expiring contract. This was accompanied by a threat to place the contract elsewhere if this sum were not given. Subsequently the contract was given without any public bidding to one "Pote" Rodriguez, the printer of the Cuban lottery tickets, who was claimed to have entirely inadequate facilities for executing the work in question.

9. PURCHASE OF MILITARY TRAINING GROUND.

The legation recently reported that a deal had been brought to its attention in which one Barlow had engaged with President Gomez to sell to Cuba land needed for a military training ground valued at $200,000 for the price of $350,000. It was said that this deal was not consummated because interference from "Washington" was apprehended.

10. ZAPATA MARSH CONCESSION.

Very recently the legation has reported that a concession is proposed whereby the privilege of exploitation of the

Zapata marsh, a territory of 1,000 square miles principally public land, is to be given in perpetuity to private interests. This is said to be a "reclamation" project. It is reported by the legation, however, that the object of the concession is to give to the concessionaire the privilege of exploiting the very valuable timber on the land and the material used in the manufacture of charcoal, the universal cooking fuel in Cuba. In addition to the loss of the timber the Government would lose by the concession what is said to be a present considerable revenue derived from permits for the taking of charcoal material. The alleged consideration moving from the concessionaire is its undertaking to drain and reclaim the land. It is reported, however, that as the concession is drafted the concessionaire may freely avail itself of the benefits of the concession while failing with impunity to perform any of its "obligations".

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No. 27

CONFIDENTIAL MEMORANDUM

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